

EMIR Disclosure

EMIR – Listed Derivatives Clearing

Summary

The purpose of this document is to provide you with information about the Intermonte SIM S.p.A. (“**Intermonte**”) offers on listed derivatives clearing within the framework of the European Market Infrastructures Regulation (“**EMIR**”), and in relation to the Central CounterParty-ies (“**CCPs**”) where we act as Clearing Member (“**CM**”).

This document sets out the main considerations for clients in terms of account setup, legal implications, and costs, which clients should consider when making their clearing services choices.

Currently Intermonte is a listed derivatives **Individual Clearing Member** (“**ICM**”) of the **Cassa di Compensazione e Garanzia S.p.A. o Euronext Clearing** (“**CC&G**”). Please note that Intermonte is not a General Clearing Member (“**GCM**”) and as such is not authorized to have clients not clearing member (“*Partecipanti indiretti*”).

This communication is drawn up in compliance with Article 39.7 of EMIR: *“CCPs and CMs shall publicly disclose the levels of protection and costs associated with the different levels of segregation that they provide and shall offer services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.”*

I. Definitions

It is important to note the following definitions in EMIR (Article 2 – Definitions):

- “**CCP**” means a “*legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.*”
- “**CM**” means “*an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation.*”
- “**client**” means an “*undertaking with a contractual relationship with a CM of a CCP which enables that undertaking to clear its transactions with that CCP.*”

II. EMIR Requirements

Article 39.4: “*A CM shall keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP.*”

Article 39.5: “*A CM shall offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing.*”

III. Obligations towards CCP (CC&G)

The categories of admission to the system are:

- GCM,
- ICM, and

- Non-CM.

CC&G assumes the role of Central Counterparty against the GCMs and the ICMs only.

The CM are obliged to fulfil their obligations to CC&G (including the payment of margin) originating either from operations concluded by the CM on its own behalf or from operations concluded by the CM on behalf of its clients.

The operations concluded by the CM on behalf of its clients can be recorded in accounts segregated for each client ("**ISA** accounts") or in accounts segregated for group of clients ("**AOA** accounts").

In the event of a CM default, the clients whose positions and assets are recorded in "segregated client accounts", pending the transmission to CC&G of the documentation for portability, assume, temporary and for a maximum of five days, the status of CMs *Pro-tempore* and obligations with CC&G to deposit margins as described below (segregated client accounts).

IV. Structure of accounts

IV.1 Segregated accounts

CC&G permits CM to enter positions and assets in the following segregated accounts:

- a) an "**House** account" dedicated to the recording of positions and collateral of the account owned by the same CM;
- b) "**Omnibus client** accounts" for positions and assets of their clients. In detail:
 - b.1) a **MOA** account (Main Omnibus Account) automatically opened by CC&G at the time of the CM;
 - b.2) **AOA** accounts (Additional Omnibus Account) opened at the request of the Clearing Member and dedicated to the segregated recording of positions and collateral of groups of clients.
- c) **ISA** accounts (Individual Segregated Account) opened at the request of the CM and dedicated to the recording of positions and collateral of clients that have chosen the individual segregation.

In such circumstances, the procedures provide that upon opening the account, the CM send to CC&G documents containing the identity of the client.

In the ISA structure, the CM can record the positions and assets of the clients in:

- c.1 a single account: "House account", or
- c.2 two separate accounts: "House account" and "Client account".

V. Subaccounts for derivative positions

CM can request CC&G to record derivatives positions in sub-accounts of the accounts indicated above.

VI. Levels of protection

VI.1 “Omnibus Client” account

Segregation of positions and assets

The registration of positions and assets in a MOA or AOA account of the CM enables, at any time and without delay, to distinguish these positions and assets both from those recorded into the “House” account and the other AOA and ISA of the same CM, both from those recorded into the accounts of the other CM, both from those of CC&G.

Netting of positions

The positions held in each MOA or AOA account can be netted, at any time and without delay, with positions held in the same account only.

Asset usage for covering margins

The assets registered in a MOA or AOA account are used as guarantee of the margins computed on positions registered in the same account.

Activation of the default procedure: portability and close out of positions

The assets and positions registered in the MOA and AOA accounts are ported to the designated CM if the documentation required by CC&G for the portability is in good standing at the moment of the activation of the default procedure.

If the portability has not taken place, the positions are closed out according to the default procedure.

On the contrary, the netting between positions registered in the omnibus client account (MOA or AOA) with positions registered in other accounts (House, ISA or other “omnibus client” accounts), of the defaulting CM.

Activation of the default procedure: usage of the assets deposited in the omnibus client account

If the portability has not taken place, the assets deposited in the MOA or AOA “Omnibus Client account” are used for the closure of the positions registered in the same account.

At the end of the default procedure (close out), any asset registered in the MOA or AOA “Omnibus Client” account in excess of the amount necessary to cover any losses sustained and the costs and expenses for the closure of such account are returned by CC&G to the CM itself or its liquidator with the indication of the “Omnibus Client” account they refer to.

VI.2 “Segregated Client” accounts

Segregation of positions and assets

The registration of positions and assets of a Client in a ISA account enables, at any time and without delay, to distinguish these positions and assets both from those of the related CM, both from those of other clients of the same CM, both from those registered in the accounts of the other CMs, both from those of CC&G.

Netting of positions

The positions held in each ISA account can be netted, at any time and without delay, with positions held in the same ISA account only.

House account and Client account of the “Segregated Client” accounts

The registration in the context of an ISA account of positions and assets of the client in two accounts ("House account" and "Client account") enables, at any time and up to the activation of the default procedure, to distinguish the positions and assets registered in one account from those registered in the other account. Netting occurs till the initiation of the default procedure separately for the two accounts.

Usage of Assets recorded into the "Segregated Client" account for covering margins

The assets registered in a ISA account are used only as guarantee of margins computed for the positions registered in such account.

If in the context of the ISA account the positions and assets are registered in the two accounts "House account" and "Client account", the assets registered in the "House" account are used as guarantee of the margins computed for the positions registered in the same "House" account and the assets registered in the "Client" account are used as guarantee of the margins computed for the positions registered in the same "Client" account.

Activation of the default procedure: portability and close out of positions

The assets and positions registered in a ISA account are ported to the Designated CM by the Client if:

- at the moment of the activation of the default procedure the documentation required for the portability has already been transmitted to CC&G;
- if within 5 CC&G open days from the activation of the default procedure the documentation required for the portability is transmitted to CC&G and in this period the Client has always duly paid the margins.

If the portability has not taken place, the positions are closed out according to the default procedure.

In this phase positions possibly registered in the "House" and "Client" account of the ISA account are netted together. However, it remains still the inability to compensate for the positions recorded in the ISA account with the positions recorded in other accounts ("House", MOA, AOA and other ISA) of the defaulting CM.

Activation of the default procedure: usage of the assets deposited in the "Segregated Client" account

If the portability has not taken place, the assets deposited in each ISA account are used only for the closure of the positions registered in such account.

If in the context of an ISA account, the positions and the assets have been registered in the "House" account and the "Client" account, the assets can be used for the closure of the positions resulting from the netting of the positions registered in the "House" and "Client" account of the same ISA account.

At the end of the default procedure (close out), any possible asset registered in each ISA account in excess of the amount necessary to cover any losses and the costs and expenses sustained for the closure of the corresponding ISA account are returned by CC&G to the Client.

VII. Insolvency Law¹

CC&G is enabled to take action for the management of the default in accordance with the Consolidated Law on Finance (Italian law n. 58 of 24 February 1998 called “**T.U.F.**”) and with the article 48 EMIR.

Such rules allow CC&G to set a procedure and to take action accordingly in the event of default or insolvency of one or more CMs in order to ensure the stability and efficiency of the system managed.

According to what has been described in the paragraphs above, the procedure for failure to fulfill obligations applied by CC&G pursuant to article B.6.2.1 of CC&G Regulation provides that, in accordance with the EMIR rules on segregation and portability, CC&G transfer to a another participant guarantees and positions of the accounts that fall in the conditions laid down in article 48 EMIR.

The Italian law ensures that both porting and the right of the Client to receive back the guarantees registered into an ISA account, t would be enforceable against a defaulting CM (including in the event of insolvency proceedings being opened against such CM).

We refer here to article *79-septies* of T.U.F. that establish that margins and other assets held by a CCP as collateral for the performance of obligations arising from clearing activities carried out for its participants may not be subject to enforcement or protective measures by creditors of the individual participant or of the central counterparty, even in the event of insolvency proceedings. The collateral held may be used exclusively in accordance with EMIR. The mentioned article *79-septies*, at paragraph 1, establish also that the starting of insolvency proceedings against a participant does not affect the adoption and effectiveness of the measures provided for in article 48 EMIR by the CCP—in accordance with that same article—aimed at managing the insolvent participant's positions and facilitating the portability of such positions and the related collateral, or the return of the latter to clients, as prescribed by the said regulation. Such measures may not be declared ineffective by virtue of the application of other provisions of the legal system.

In case of the starting of insolvency proceedings with regard to an Italian participant and a CCP authorized under EMIR but established in another UE Member State, the enforceability against the proceedings of measures adopted by the central counterparty pursuant to article 48 EMIR is governed by the law governing the system (article *79-septies* of T.U.F., paragraph 2). In case of the starting of insolvency proceedings with regard to an Italian participant and a CCP established in third country but recognized pursuant to EMIR, the safeguards provided for in paragraph 1 of Article *79-septies* of T.U.F. shall apply.

In particular, T.U.F. clearly protects the collateral acquired by CC&G in harmony with the requirements of EMIR, including the event of the insolvency of a participant. Since Article 48 (5-6) EMIR provides the mechanism of portability and Article 48 (7) EMIR provides that any outstanding balances must be returned to the client of the defaulting participant, it follows that Article *79-septies* of T.U.F. recognizes, indeed demands, that CC&G use collateral recorded in segregated accounts only for such purposes, even in a scenario of default.

VIII. Cost implications

¹ The description contained herein is a summary only and does not constitute legal advice. Clients should obtain independent legal advice concerning the insolvency laws applicable to their specific circumstances and jurisdiction.

Because of the legal, operational and system impacts that an ISA account setup and running has, additional costs, on top of the already agreed clearing fees, can be charged by the CCP and the CM.

CCP costs

These costs are publicly disclosed by the CCP and will be charged by the CCP to the CM. As CM we will pass these costs to our clients.

Intermonte costs

For all clients wishing to move to an ISA structure, we will charge some extra costs, on top of the existing clearing fees and in addition to the CCP costs that will be passed to you.

Clients choices

Clients may at any time send us a letter asking for a change of account set up on any CCP.

IX. Important notice

Unless you request a change of structure in writing, Intermonte will continue to maintain the existing account structure we currently have in place for you.

Should you require any further information, please do not hesitate to contact us.